

**Verizon New England Inc.
d/b/a Verizon Massachusetts**

Commonwealth of Massachusetts

D.T.E. 98-57, Phase III

Respondent: Paul R. Richard
Title: Senior Specialist – Wholesale
Services

REQUEST: Department of Telecommunications and Energy, Set #3

DATED: September 17, 2001

ITEM: DTE-VZ 3-16 Is it technically feasible to provide PARTS as UNEs? If not, why not?

REPLY: The network architecture that would support the potential PARTS offering could not be provided as UNEs because it contains some components that are clearly not UNEs (*e.g.*, DSLAM functionality at the remote terminal, etc.). Not all network services can be or should be declared UNEs. To be defined as a network element subject to unbundling, a network component must satisfy the Act's necessary and impair criteria as well as certain threshold criteria including nondiscriminatory access at accessible terminals. Several of the individual pieces of PARTS run afoul of one or another of the UNE criteria/standards (*e.g.*, DSLAM functionality). Moreover, as explained in Verizon MA's Direct Testimony (pp. 22-28) and Rebuttal Testimony (pp. 5-6), any further unbundling for the purpose of supporting a CLEC-provided line card option is not technically feasible.

In Verizon MA's opinion, access to a PARTS type offering is technically feasible at the serving wire center. However, Verizon MA does not believe that offering PARTS at the central office would constitute a UNE. PARTS is a broadband service, and the FCC has found that the broadband market is "robust and competitive." The FCC stated that:

"The record before us, ... shows a continuing increase in consumer broadband choices within and among the various

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delivery technologies - xDSL, cable modems, satellite, fixed wireless, and mobile wireless, suggests that no group of firms or technology will likely be able to dominate the provision of broadband services.”

See Rulemaking to Amend Parts I, 2, 21, and 25 of the Commission's Rules to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, 15 FCC Red 11857, ¶17 (2000).

Therefore, a potential PARTS offering would not meet the UNE criteria or standards.

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ITEM: DTE-VZ 3-17 Does lack of access to PARTS as UNEs materially diminish a requesting carrier's ability to provide the service that they seek to offer? If not, discuss each of the five factors indicated in 47 C.F.R. § 51.317(b)(2) in your answer.

REPLY: As set forth by the FCC in its *UNE Remand Order*, the framework for determining whether a particular network element should be unbundled is based on the "necessary" (for proprietary elements) and "impair" standards set forth in Section 251(d)(2) of the Telecommunications Act of 1996 (the "Act"). In considering the "impair" standard as it applies to network elements that are non-proprietary in nature, 47 C.F.R. 51.317 (b)(1) & (2) state, in pertinent part, as follows:

(b) Non-proprietary network elements. The Commission shall undertake the following analysis to determine whether a non-proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

- (1) Determine whether lack of access to a non-proprietary network element "impairs" a carrier's ability to provide the service it seeks to offer. A requesting carrier's ability to provide service is "impaired" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer. The Commission will consider the totality of the circumstances to determine whether an alternative to the incumbent LEC's

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network element is available in such a manner that a requesting carrier can provide service using the alternative. If the Commission determines that lack of access to an element "impairs" a requesting carrier's ability to provide service, it may require the unbundling of that element, subject to any consideration of the factors set forth under section 51.317(c).

- (2) In considering whether lack of access to a network element materially diminishes a requesting carrier's ability to provide service, the Commission shall consider the extent to which alternatives in the market are available as a practical, economic, and operational matter. The Commission will rely upon the following factors to determine whether alternative network elements are available as a practical, economic, and operational matter:
 - (i) Cost, including all costs that requesting carriers may incur when using the alternative element to provide the services it seeks to offer;
 - (ii) Timeliness, including the time associated with entering a market as well as the time to expand service to more customers;
 - (iii) Quality;
 - (iv) Ubiquity, including whether the alternatives are available ubiquitously;
 - (v) Impact on network operations.

First, as a preliminary matter, it is premature to assess whether a CLEC is "impaired" under 47 CFR 51.317 if PARTS is not unbundled when the network components needed to support PARTS (*e.g.*, packet switching) are not even deployed in Massachusetts. It is an undisputed fact that an incumbent LEC ("ILEC") cannot be required to unbundle facilities that do not yet exist in its network. This would contradict the Eighth Circuit Court's holding that an ILEC cannot be required under Section 251(c)(3) of the Act to construct new facilities or network capabilities for its competitors or build a network that is *superior* to its existing network for the purpose of unbundling it for its competitors. *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 812-13 (8th Circuit, 1997). Therefore, a non-existent PARTS offering cannot be defined as an

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unbundled network element ("UNE"). Likewise, yet-to-be-installed network components that support PARTS cannot be defined as UNEs.

Second, in its *UNE Remand Order* the FCC rejected the notion that packet switching or DSLAMS be declared UNEs. The FCC found that the equipment needed to provide advanced services, such as DSLAMS and packet switches, is widely available on the open market at comparable prices to ILECs and competitors alike (§308). Likewise, the FCC recognized that because ILECs and their competitors are both in the early stages of packet switch deployment and because ILECs do not retain a monopoly position in the advanced services market, the ILECs and CLECs would experience "relatively similar packet utilization rates of their packet switching capacity" (§308). Therefore, the ILEC would not possess significant economies of scale in their packet switches as compared to other carriers (§309).

Third, PARTS would not qualify as a UNE because it is only *one* possible means of enabling a CLEC to provide high speed data services to fiber-fed end users. For many of the market segments to be served, there are alternative providers of advanced services, including cable companies. End users may be reached by cable modems or wireless arrangements or, in some cases, by transferring their service to copper. CLECs also have the alternative of deploying the necessary advanced services architecture on their own through interconnection of a DSLAM utilizing Verizon MA's current tariffed offerings of sub-loop unbundling and remote terminal ("RT") collocation or some other nearby positioning of the CLEC's transmission equipment (e.g., in separate cabinets near the RT).

Fourth, at this juncture, the issue is not one of "impairment" under the Act and FCC rules, but rather relates to whether any carrier will take the economic risk to make the up-front capital investments required to deploy advanced services technology. Because the market demand and the technology for these services are still under development, Verizon would be taking a considerable financial risk by building a PARTS infrastructure and investing in equipment that may change. Similarly, Verizon would be taking a market risk regarding the quantities and locations for deployment.

Fifth, Verizon MA has no service or technical description, or business

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plan relating to the “services they [CLECs] seek to offer.” Likewise, CLECs (e.g., Covad) have provided no information regarding the pricing or demand for their alleged new, high quality retail services. Accordingly, Verizon MA is unable to comment on whether these undefined services would be financially viable with or without UNE access capability. To the extent that these potential services are not viable with UNE access, it cannot be claimed that that the unavailability of such access impairs the Data LEC (“DLEC”) from providing the “services it seeks to offer.”

As an example, approximately five years ago, the DLECs claimed that they were impaired by the unavailability of sub-loop unbundling and RT collocation. Nevertheless, after Verizon has invested several million dollars in sub-loop OSS and development of methods and procedures for these services, Covad alleges in this current proceeding that sub-loop unbundling and RT collocation are not financially viable. Contrary to COVAD’s claims, sub-loop interconnection does represent a viable means for CLECs to achieve access to the high frequency portion of the loop. However, Covad’s current position highlights the fact that when DLECs request a UNE in the future (*e.g.*, the proposed unbundling of PARTS), there is no way of knowing whether that proposed UNE will be a commercially viable or whether it will actually be used by the DLECs in a manner that justifies the implementation costs. More recently, Verizon has had a similar experience with line sharing and line splitting, services for which CLECs vigorously argued and now are barely utilizing.

Accordingly, in order to incent *all* facilities-based providers (including Verizon) to make the capital investments to develop such advanced service offerings in the future, it is necessary to establish rates for such offerings that would appropriately compensate providers for assuming those risks. The minimal TELRIC cost recovery principles applied to UNEs do not provide the necessary level of compensation.

Notwithstanding the above, Verizon MA responds as follows:

Verizon MA cannot comment on 47 CFR 51.317(b)(2)(i) because it has not developed a cost study for providing a potential PARTS offering and it has not received information regarding specific CLEC costs for providing packet switching via sub-loop interconnection or other

currently available means. Therefore, Verizon MA has no basis for comparing the costs associated with PARTS versus other alternatives.

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Regarding 47 CFR 51.317(b)(2)(ii), Verizon MA has previously stated that the necessary infrastructure does not exist in its present network and would require approximately one year to plan and install NGDLC in selected Remote Terminal locations and implement a PARTS offering (Verizon MA Direct Testimony, pp. 5-7). Although CLECs have provided no time estimates to deploy a DSLAM to access Verizon MA's copper sub-loop, Verizon MA assumes that it would require no longer than one year.

Likewise, regarding 47 CFR 51.317(b)(2)(iii), Verizon MA believes that there would no difference in quality between a potential PARTS offering and the CLEC-provided DSLAM via Verizon MA's tariffed sub-loop offering.

The issue of ubiquity under 47 CFR 51.317(b)(2)(iv) is comparable between Verizon and the CLECs because neither provider has deployed the necessary architecture. In addition, due to varying customer demographics and network characteristics, Verizon MA anticipates that the advanced services market will not be "one-size fits all," and, therefore, a potential PARTS offering may be economical in some, but not other, RT locations.

Finally, Verizon MA cannot comment on 47 CFR 51.317(b)(2)(v) because it has no information regarding the impact on CLEC network operations.

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Respondent: Paul R. Richard
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Services

REQUEST: Department of Telecommunications and Energy, Set #3

DATED: September 17, 2001

ITEM: DTE-VZ 3-18 In answering the following questions, please include all facts upon which you rely:

- (a) Will unbundling the PARTS network promote the rapid introduction of competition?
- (b) Will unbundling the PARTS network promote facilities-based competition, investment, and innovation?
- (c) Will unbundling the PARTS network promote reduced regulation?
- (d) Will unbundling the PARTS network provide certainty to requesting carriers regarding the availability of packet switching at remote terminals?
- (e) Will unbundling the PARTS network be administratively practical to apply?

REPLY The request relates to 47 CFR 51.317(b)(3), which includes the additional factors to consider when determining whether to require the unbundling of a network element. This discussion is premature because PARTS is not a current service offering and, as stated in Verizon MA's Reply to DTE 3-17, some network components would fail the UNE test criteria therefore, PARTS, if offered, cannot be ordered to be

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unbundled. Further, it is also premature in light of the FCC's pending investigation of methods by which competitors can access the high frequency portion of the loop in situations where fiber has been deployed in the loop, as stated in Verizon MA's Rebuttal Testimony (pp. 12-13).

Notwithstanding the above, Verizon MA responds as follows:

- (a) No. The FCC and others have found that the broadband market is competitive today. *See* Verizon MA's Reply to DTE 3-16. For example, in comments filed on September 24, 2001, in CC Docket 98-146, AT&T stated that "[s]ubscribership [for advanced services] is increasing, even in the current economic downturn; all segments of the industry ... are investing in advanced telecommunications capabilities and rolling out new facilities and services; and healthy competition is developing between a variety of providers using a multitude of technologies."
- (b) No. Unbundling the PARTS network will not promote CLEC innovation and diversity because all providers' capabilities for service features and functionality will derive from Verizon's platform technology. By contrast, CLEC use of sub-loop interconnection and RT collocation of their own DSLAMs to provide advanced services would stimulate facility-based alternatives that would potentially result in the added benefits of introducing diverse technologies, platforms and network solutions.
- (c) No. Verizon MA's currently available sub-loop tariffed offering, which enables a CLEC to interconnect its DSLAM to Verizon's copper distribution at the Feeder Distribution Interface ("FDI") or other location near the RT, offers the least degree of regulation and the greatest likelihood of product innovation, as indicated in Verizon MA's Reply to (b) above. Classifying the PARTS network components as UNEs provides no discernable benefits and will potentially lead to a higher level of regulatory oversight and involvement in the design, management, and operation of a new advanced services network.

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- (d) No. Unbundling the packet switching network is not required to ensure the availability of CLEC advanced services, which can currently be provisioned utilizing Verizon MA's existing sub-loop tariffed offering, RT collocation and DSLAMS. Moreover, the risk of not being able to recover costs beyond TELRIC based UNE pricing dampens the incentive to deploy this technology.
- (e) No. There are no administrative or operations procedures planned or in place to support this hypothetical unbundling of the network components supporting a non-existent service. Further, as mentioned in both Verizon MA's Direct Testimony (pp. 19-22) and Rebuttal Testimony (pp. 10-12) the CLEC-provided line card option under any circumstances would present administrative difficulties, as well as increased costs to Verizon MA to create new OSSs to identify and administer CLEC-owned cards, maintain multiple inventories, and deploy additional dispatches, etc.

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